United Nations S/2005/781

Security Council

Distr.: General
14 December 2005

Original: English

Letter dated 30 November 2005 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council

I am pleased to transmit herewith the assessments of the President (see annex I) and of the Prosecutor (see annex II) of the International Criminal Tribunal for the Former Yugoslavia, pursuant to paragraph 6 of Security Council resolution 1534 (2004).

I would be grateful if you could transmit these assessments to the members of the Security Council.

(*Signed*) Fausto **Pocar**
President

05-64224 (E) 060106

Annex I

Assessment and report of Judge Fausto Pocar, President of the International Criminal Tribunal for the Former Yugoslavia, provided to the Security Council pursuant to paragraph 6 of Council resolution 1534 (2004).

1. This report is submitted pursuant to Security Council resolution 1534 (2004) adopted on 26 March 2004 in which the Council, in paragraph 6 of the resolution, requested the International Criminal Tribunal for the Former Yugoslavia ("ICTY") "to provide to the Council, by 31 May 2004 and every six months thereafter, assessments by its President and Prosecutor, setting out in detail the progress made towards implementation of the completion strategy of the Tribunal, explaining what measures have been taken to implement the completion strategy and what measures remain to be taken, including the transfer of cases involving intermediate and lower rank accused to competent national jurisdictions."[1] This is the fourth report of the President of the Tribunal in compliance with Security Council resolution 1534 (2004) and summarizes the steps taken towards implementation of the completion strategy from June to November 2005.

2. At the outset, I bring to the attention of the Security Council that I was elected to the Presidency by the Judges of the Tribunal on 17 November 2005 after having served as Vice-President. Thus, this is my first report to the Security Council pursuant to resolution 1534 (2004). Given the recent date of my election, this report primarily represents the achievements and progress of the Tribunal under the leadership of my predecessor, Judge Theodor Meron.

I. Introduction

3. The three Trial Chambers of the Tribunal have continued to function at maximum capacity, hearing six trials simultaneously and managing 18 cases in the pre-trial stage. The cases tried during the reporting period are: *Milošević*; *Orić*; *Hadžihasanović and Kubura*; *Limaj*, *Musliu and Bala*; *Krajišnik*; *Halilović*; and *Mrkšić*, *Radić and Šljivančanin*. Since the submission of the May 2005 report to the Council, Trial Chambers have rendered Judgement in two cases involving one accused (*Halilović*) on 16 November 2005 and three accused (*Limaj, Musliu and Bala*) on 30 November 2005. The *Hadžihasanović and Kubura* case is currently in the Judgement-writing phase with issuance expected in January 2006. Judgements are also expected in *Orić* and *Krajišnik* by mid-2006 and in *Milošević* by December 2006. In addition, four contempt cases involving six accused have been assigned to Trial Chambers in the reporting period: *Šešelj and Margetić*; *Marijačić and Rebić*; *Jović*; and *Križić*.[2]

4. The Appeals Chamber has also continued to operate at full capacity and has disposed of 30 appeals both from the ICTY and the International Criminal Tribunal for Rwanda ("ICTR"), since the

[1] The present report should be read in conjunction with the previous three reports submitted pursuant to Security Council resolution 1534 (2004): S/2004/420 of 24 May 2004; S/2004/897 of 23 November 2004; and S/2005/343 of 25 May 2005.

[2] *See* Enclosures I and II.

last report. Of those, four have been Appeals Judgements, 23 have been decisions on interlocutory appeals, one has been a contempt decision, and two have been referral decisions.[3] Currently, 27 appeals are pending (both ICTY and ICTR) comprising 13 appeals from Judgements, nine interlocutory appeals, two 11*bis* referral appeals, two review proceedings and one appeal from a decision of the ICTR President. Judgements in the *Naletilić and Martinović* and *Stakić* cases are currently being drafted with issuance expected in January and February 2006.[4] The *Nikolić* case is to be heard in the first week of December 2005 and issuance of the Judgement is also expected in January or February 2006. *Cyangugu* and *Gacumbitsi* will both be heard in February 2006 with issuance of their respective Judgements expected a few months thereafter.

5. The Tribunal continues to receive new arrivals of indictees or fugitives. Since the May 2005 report, three more indictees have been apprehended resulting in a total of 20 new fugitives that have been or are being transferred to the Tribunal in the past year. These new fugitives amount to a greater than 50% increase of the number of persons awaiting trial in November 2004.[5] Only seven indictees remain at large. This unprecedented number of new arrivals to the Tribunal in a short period of time has had and will continue to have a significant impact on the implementation of the completion strategy. This issue is addressed in more detail later in this report.[6]

6. At present, 44 accused in 18 cases are awaiting trial (not including the contempt cases). These numbers represent a decrease of seven accused since the last report due to the start of new trials, 11*bis* referral of cases to national jurisdictions, and two guilty pleas. Of these 44, 22 have been provisionally released. Two accused awaiting Judgement have also been provisionally released.[7]

II. Measures taken to implement the completion strategy

A. Internal measures to accelerate proceedings

7. The Judges of the Tribunal have continued to monitor the impact of the Rules of Evidence and Procedure ("Rules") on the efficiency of proceedings at the Tribunal. In August, a significant amendment to the Rules was made removing the requirement in Rules 54*bis*, 65 and 127 that leave be granted by a Bench of three Appeals Judges before a Bench of five Appeals Judges would decide an interlocutory appeal. In practice, this leave requirement often resulted in two rounds of pleadings and two reasoned decisions being prepared by the Appeals Chamber on the same arguments proffered by the parties. Already, the new procedure has cut in half the time required to dispose of 12 interlocutory appeals.

[3] *See* Enclosures VI and VII.

[4] *See* Enclosures VI and VII.

[5] As stated in the May 2005 report, at the end of 2004, there were only 34 accused awaiting trial, either in the custody of the Tribunal or on provisional release.

[6] *See* Enclosure III.

[7] *See* Enclosures I and IV.

8. As was stated in the May 2005 report, two working groups of Judges have been formed to examine the procedures and practices of the Trial and Appeals Chambers with a view to improving their working methods, while maintaining the Tribunal's commitment to due process. The Working Group on Speeding up Trials, chaired by Judge Bonomy and assisted by Judges Hanoteau and Swart, submitted a final report on courtroom space to my predecessor in July 2005, which focuses on the issues of adding a fourth courtroom to the Tribunal and possible modification to Courtroom Two in order to increase its capacity. Due to its size and configuration, Courtroom Two's use has been limited to trials of a maximum of two accused. The Working Group came to the unanimous conclusion that Courtroom Two could be adjusted to allow for the conduct of trials involving up to three accused persons and that it would be useful for a fourth courtroom, providing the same facilities, to be constructed. The Working Group reported that the contribution of two courtrooms capable of dealing with cases involving up to three accused could be vital to expediting the work of the Tribunal, especially in the event that Courtrooms One and Three are fully occupied by multiple accused trials. The additional accommodation would also allow for more flexibility in the sitting arrangements, so that one trial might sit for longer hours in a dedicated courtroom for specific periods of time. Furthermore, it would enable all pre-trial and Appeals Chamber proceedings to continue without interrupting the conduct of any trial.

9. Following the Working Group on Speeding up Trials' expression of support for building a fourth courtroom should two of the Tribunal's courtrooms be allocated for trials of multiple accused, the Registrar of the Tribunal produced a cost/benefit analysis on the feasibility of the project in September 2005. That report concludes that the practical realisation of a fourth courtroom by the end of 2006 is possible. Technical considerations concerning associated construction activities, security issues, staff displacement and accommodation can all be resolved. With respect to the overall costs of the project in terms of either the provision of a fourth courtroom by itself or with an additional Bench of Judges, it appears that if the decision is based solely on anticipated costs and projected savings, it is difficult to establish and document an overall financial benefit. Based on the currently available planning projections, the number, length and size of court cases currently used to project savings do not appear to be reduced to the extent necessary to translate into savings, which would cover the expenses associated with building and staffing either the fourth courtroom only, or with the provision of an additional Bench. The current projections reflect that even with the fourth courtroom and additional Bench, six trials would continue to run into 2009. Therefore, although there are advantages to the consideration of a fourth courtroom in terms of increasing court time and reducing the length of the small cases, further considerations are still necessary to fully assess the viability of the project.

10. The Tribunal is still assessing this initial report along with the July 2005 report by the Working Group on Speeding up Trials and will, in the near future, decide whether to submit this option to the Security Council for guidance. In May 2005, my predecessor indicated that the intention of the Tribunal was to request interested governments to donate funds for building a fourth courtroom rather than burden the UN budget should the Tribunal ultimately decide to pursue this project. In the event that it does, I intend to adopt the approach for funding envisioned by my predecessor.

11. The Working Group on Speeding up Trials is due to submit a further report in the coming months, which focuses on improvements to pre-trial and trial practice. That report will address such issues as earlier production of witness statements, including expert reports; submission and determination in the pre-trial phase of motions for judicial recognition of adjudicated facts; Judgement-writing practices; and increasing efficient disposal of pre-trial motions.

12. The Working Group on Speeding up Appeals, chaired by Judge Mumba and assisted by Judge Schomburg and myself, completed its work in July 2005 and circulated a final report with concrete proposals for improving the procedures, methods and working practices of the Appeals Chamber regarding interlocutory appeals, appeals from Judgements, appeals from guilty pleas and sentencing appeals. These recommendations, some of which are summarized below, were unanimously adopted by the Judges in the July 2005 session of the plenary meeting of the Judges of the Tribunal. Subsequently, they were implemented into the Rules and Practice Directions of the Tribunal in September and November 2005.

13. First, the Working Group presented proposals for accelerating appeals from Judgements and related filings and motions through amendments to specific Rules and Practice Directions. With regard to motions for the filing of additional evidence on appeal under Rule 115, the Working Group suggested delaying their filing until after all of the appeal briefs in a case are submitted. The Working Group recommended this in order to avoid repetitious Rule 115 motions for decision drafters and to eliminate delay in the appeals briefing schedule. It was agreed that Rule 115 motions should be filed within 30 days of the date for filing the brief in reply instead of within 75 days from the date of the Trial Judgement. In addition, the Working Group recommended that where Rule 115 motions were filed out of time after an appeals hearing, the standard for admission of that evidence should be heightened such that it will only be admitted where the submitting party demonstrates cogent reasons. The Working Group noted that such an amendment to Rule 115 is necessary for discouraging a growing trend by parties to file non-meritorious Rule 115 motions just before the Appeals Judgement is due to be issued.

14. With regard to sentencing appeals, amendments to Rules 111 through 113 were proposed by the Working Group for shortening the briefing schedule and reducing the word limit for briefs filed. It was recommended that the time for filing a notice of appeal from a sentencing Judgement be reduced from 75 days to 30 days, for filing the appeal brief from 75 to 30 days, and for filing a response to the appeal brief from 40 to 30 days. Briefs in reply will now be filed within 10 days as compared to a previous 15 days. In all, a total of 105 days will be saved in the briefing schedule for each sentencing appeal.

15. On matters related to pre-appeal proceedings, the Working Group proposed expanding the power of the pre-appeal Judge to dispose of routine procedural motions, such as those requesting extensions of time or word limits, without consulting the full Bench of Judges through an amendment to Rule 127 and the relevant Practice Direction. The pre-appeal Judge will also be designated as the final arbiter on translation deadlines with the authority to decide what documents are necessary for the appeal and to eliminate translation of any unnecessary documents. The Working Group also proposed amendments to the Practice Direction on the Lengths of Briefs and Motions for shortening the parties'

filings. Page limits have been replaced by word limits and the filing party must certify compliance with the word limit.

16. Second, the Working Group suggested means for accelerating appeals other than appeals from Judgements. The Working Group recommended that Rule 116*bis*, the Rule concerning expedited appeals procedures which, *inter alia*, allows appeals to be disposed of entirely on the written briefs, be expanded to include Rule 11*bis* appeals of referral decisions as well as appeals of contempt or false testimony convictions under Rules 77 and 91.

17. Third, the Working Group made recommendations to the Registrar of the Tribunal and the Registrar of the ICTR with respect to translation practices by the Translation Unit and on assignment of Defence Counsel. The Working Group suggested that mechanisms be put in place to provide more expeditious translations of Trial Judgements into the working languages of the Defence teams, where different from the one in which the Judgement is rendered. It proposed that where the Defence team works in the language in which the Judgement is issued, priority be given to translating the Judgement into Bosnian/Croat/Serbian ("BCS") rather than the other official language of the Tribunal. Recommendations were also made to the Registry with regard to the appointment of Defence Counsel at trial, in order to avoid problems of delay resulting from a change of Counsel on appeal.

18. As stated previously, these proposals and recommendations by the Working Group on Speeding up Appeals were unanimously adopted by the Judges of the Tribunal and have been implemented. Their impact is already being felt. They have been and will continue to result in increased efficiency of appeals proceedings before the Appeals Chamber.

19. Another measure taken to accelerate proceedings at the Tribunal has been the joinder of cases. Since the May 2005 report, two motions for joinder filed by the Prosecution have been approved by decision of the Trial Chamber. Currently, three trials of six or more accused are in the pre-trial stage, with one of those cases anticipated to commence early next year. One of the cases involves eight Srebrenica defendants from six different cases (nine if fugitive Tolimir is apprehended) and the other two trials involve six defendants respectively (seven if fugitive Đjordjević is apprehended), consolidating eight cases in total.

20. In order to accommodate such a large number of accused and their Counsel, the Tribunal has begun to renovate its courtrooms. In order to ensure minimal disruption to trials, renovation is taking place on a staggered basis with the completion of the first courtroom expected on 16 January, the second courtroom on 6 February and the final courtroom on 20 March 2006.

21. A significant change at the Tribunal since the last report, which has the potential to enhance the speed of our proceedings, is the introduction of the e-Court system. This system, which integrates all case-related documents into a central electronic database thereby eliminating the need for unnecessary paper filings, should increase the accessibility of information while expediting proceedings. Following a successful pilot run of the e-Court system in the *Halilović* case, which saved the Trial Chamber approximately one and a half months of Judgement-writing time, a Practice Direction was issued by my predecessor mandating the application of e-Court to all future proceedings at the

Tribunal. The *Mrkšić et al.* case, which commenced in October this year, is the first case to follow that Practice Direction. While there have been significant problems with the application of the system in the case thus far, these are being remedied. It is hoped that the application of e-Court will render the results seen in the *Halilović* case in all future proceedings at the Tribunal.

22. Critical to the success of the completion strategy is cooperation between the organs of the Tribunal. The Chambers, Registry and Prosecution have continued to work together to find creative ways to increase the efficiency of proceedings at the Tribunal. Of particular note during the reporting period has been the increase in cooperation and communication between the organs of the Tribunal and the Association of Defence Counsel. The Association of Defence Counsel has shown a willingness to cooperate with the Tribunal in following the completion strategy through its dedication to using the e-Court system and its negotiations with the Prosecution over issues related to disclosure of materials.

23. The realisation of the Tribunal's completion strategy also relies in large part on the retention of its qualified staff. During the reporting period, attention has been given to finding effective ways to do so such as through accelerated promotion. Consideration has also been given to enhancing the abilities of our current legal staff through continued careful organization of the teams assigned to cases and further development of their legal research and writing skills. In addition, maximum use is being made of ICTR staff assigned to the Appeals Chamber who are also being assigned to ICTY cases in the same way that ICTY staff have long been assigned to ICTR appeals.

B. Ad litem Judges

24. Ad litem Judges have become critical for the efficient functioning of the Tribunal. The adoption of amendments to the Tribunal's Statute by the Council in its resolution 1597 (2005), removing the prohibition on the re-election of ad litem Judges, resulted in the re-election of Judges Thelin and Rasoazanany in the August 2005 election. The re-election of Judge Thelin allowed the Tribunal to appoint him to a new trial while he continued to work on the Judgement in the trial to which he was previously appointed. In addition, the election of the new list of ad litem Judges has provided the Tribunal with a pool of Judges to be called upon as cases become trial-ready. The Tribunal is already doing so.

25. The Tribunal is extremely grateful to the Council for having adopted resolution 1581 (2005) by which the nine ad litem Judges assigned to cases at that time were permitted to continue beyond the expiry of their terms in order to allow those cases to be finished without disruption causing delay. As Members of the Council are aware, predicting the length of proceedings is never 100% certain, and I regret to inform that the estimates provided to the Council as to the length of two trials in which ad litem terms were extended no longer prove accurate. The *Orić* case, in which ad litem Judges Eser and Brydensholt were appointed and had their terms extended, is now due to finish in June or July 2006. The other case, *Krajišnik*, in which ad litem Judge Canivell's term was extended, is now due to finish in July 2006. The principal reason for these variations in the estimated end dates for these trials is to ensure equality of arms for the defence in the presentation of its case. As has been stated by past

Presidents of the Tribunal, due process and human rights cannot be sacrificed in favour of speeding up trials.

26. The Tribunal is also grateful to the Security Council for resolution 1629 (2005), which permitted the early appointment of Judge Van Den Wyngaert as a permanent Judge of the Tribunal in October 2005. Judge Van Den Wyngaert was elected as a permanent Judge of the Tribunal in the November 2004 elections while serving as an ad litem Judge. Her early appointment as a permanent Judge allowed the Tribunal to immediately assign her to the *Mrksić et al.* case while she completed her assignment as an ad litem Judge in the *Limaj et al.* case, which was then in the Trial Judgement writing phase.

C. Referral of cases involving intermediate and lower ranking accused to competent national jurisdictions

27. The Tribunal has continued to refer cases involving intermediate and lower ranking accused to national courts in the former Yugoslavia pursuant to Rule 11*bis* of the Rules. To date, the Prosecutor has filed 12 referral motions involving 20 accused. One motion has been denied, one motion has been withdrawn by the Prosecution, and the Prosecution has indicated that it will soon withdraw another motion (*Rajić* guilty plea). So far, the Referral Bench has granted six motions and only three are pending decision. One case, which was not appealed, has been referred to the Republic of Croatia and two have been referred to the War Crimes Chamber of the State Court of Bosnia and Herzegovina following the Appeals Chamber's affirmance of the Referral Bench's decisions. The remaining three decisions by the Referral Bench are currently pending appeal.[8]

28. While referring cases to the region, the Tribunal has been careful to ensure that a fair trial will be accorded to those defendants transferred and has placed an obligation upon the Prosecutor to provide regular reports to the Tribunal on the progress of the referred cases. It should be noted that the Prosecutor has a right under Rule 11*bis* to request the Tribunal to take back a referred case should she determine that a fair trial is not being accorded to an accused. This may have an impact on the completion strategy in the future as discussed below.

29. In order to ensure that due process is accorded in cases referred, the Tribunal has continued to support initiatives to build local capacity of national courts through, for example, training of local judiciary and prosecutors in Croatia, Serbia and Montenegro, and Bosnia and Herzegovina. In June 2005, the Tribunal organised a working visit of Prosecutors from Bosnia and Herzegovina and in July, a working visit of Judges and Prosecutors from Croatia to the Tribunal. During the visits, staff of the Tribunal explained the work of the Tribunal, including the application of substantive and procedural laws and the collection and use of evidence. Judges of the Tribunal participated in a round table discussion on the assessment and weighing of evidence and other Tribunal officials discussed the referral of cases pursuant to Rule 11*bis*. Also in July, members of the Serbian judiciary were welcomed at the Tribunal. In September, the Tribunal hosted a visit of information technology staff from the War Crimes Chamber of the Belgrade District Court in Serbia. Information technology staff

[8] *See* Enclosure V.

of the Tribunal made presentations on the Tribunal's delay broadcast system, access to Tribunal documents, and exchange of documents between the War Crimes Chamber and the Tribunal. In addition, the Tribunal has received visits from the spokesperson for the Registry and Chambers of the War Crimes Chamber and hosted a visit from the Head of the Organisation for Security and Cooperation in Europe (11*bis*) trial monitoring team in Bosnia and Herzegovina.

30. A number of capacity-building initiatives were also taken within the region. For example, in June 2005, Judge Mumba from the Appeals Chamber gave a keynote address in Neum, Bosnia and Herzegovina, on the topic of sentencing for war crimes before the largest gathering of criminal law practitioners in that country as a guest of the Association of Judges and the Association for Criminal Law and Criminology of the Federation of Bosnia and Herzegovina. Also in June, the Tribunal's Registry Liason Officer in Bosnia and Herzegovina gave a two-hour briefing on the Tribunal to ten of the twelve Judges of the War Crimes Chamber of the State Court of Bosnia and Herzegovina. The Liason Officer also provided documents and materials to the Judges for furthering their understanding of Tribunal procedure and jurisprudence. In September, the Liason Officer gave a lecture on the Tribunal and distributed Tribunal documents to a group of 20 lawyers from Serbia and Montenegro, Croatia, and Bosnia and Herzegovina at a regional lawyers' seminar in Sarajevo. That same month, the Tribunal's Victims and Witnesses Section held a conference in Sarajevo gathering representatives of war crimes courts to discuss the latest developments in war crimes proceedings and needs and issues facing victims and witnesses in the different jurisdictions in the region. Finally, in October, the Registry's Liason Officer for Bosnia and Herzegovina spoke at a training programme organised by the Criminal Defence Section of the State Court of Bosnia and Herzegovina, which gathered 30 defence lawyers. He spoke on the legal framework of the ICTY, the completion strategy and referral of cases under Rule 11*bis*.

31. The Tribunal remains committed to doing its utmost to assist the development of the rule of law in the former Yugoslavia. As a result of the above mentioned initiatives in the past six months, the capacity of local courts in Bosnia and Herzegovina, Croatia and Serbia and Montengero for handling complex war crimes cases is steadily growing.

32. In addition, the Tribunal has continued to distribute key materials translated into the main languages of the region and to develop close relations with legal professionals, the NGO community, local media and governments. During the reporting period, the Tribunal distributed around 1,000 CD-Roms containing the key documents of the Tribunal, its decisions and Judgements to individuals and groups in the former Yugoslavia. The Tribunal's web-site continues to reach out to the region receiving an average of 13,000 individual visits per month. Further, the numbers of people who have watched or listened to the proceedings via our internet site are impressive. For the month of September, 98,000 people accessed the BCS video feed, nearly 10,000 viewed the English feed, and over 1,500 people accessed the Albanian video feed. Also, the Tribunal's Outreach office held a series of conferences entitled "Bridging the Gap Between the ICTY and Communities in Bosnia and Herzegovina". Through these conferences, the Tribunal explained to the communities most affected by the crimes at the heart of Tribunal's work how the Tribunal has bought the perpetrators to account and rendered justice to the victims. These activities have led to greater understanding and support for

the work of the Tribunal in the former Yugoslavia, both of which are important for the Tribunal to achieve its mandate of bringing peace and reconciliation to the region.

D. Cooperation of States in the region with the Tribunal

33. Full cooperation from the States in the former Yugoslavia has always been paramount to the success of the Tribunal. While cooperation with all States in the region continues to improve, the failure to arrest high-level accused such as Radovan Karadžić, Ratko Mladić and Ante Gotovina remains a major concern.

34. The cooperation with Croatia is satisfactory with the exception of its failure to render Ante Gotovina to the Tribunal. While the Prosecutor assessed that Croatia is doing all that it can to locate and arrest Gotovina before the European Union Task Force on Croatia on 3 October 2005, I remain concerned about the continued failure to ensure the arrival of Gotovina at the Tribunal.

35. Bosnia and Herzegovina's level of cooperation remains very good at both the Federation and State levels. With respect to the Republika Srpska within Bosnia and Herzegovina, the level of cooperation remains insufficient. It has provided no information on Karadžić and Mladić. However, there have been signs, confirmed by the Office of the High Representative for Bosnia and Herzegovina, that Republika Srpska is beginning to take seriously its obligation to make available to the Tribunal information in its possession concerning the crimes that took place in Srebrenica in the period from 11-19 July 1995. There are encouraging reports that Republika Srpska has forwarded documents to the Tribunal's Office of the Prosecutor as well as to the Prosecutor's Office in Bosnia and Herzegovina.

36. While Serbia and Montenegro's cooperation has improved, five of the seven accused remaining at large are believed to be in Serbia and Montenegro or the Republika Srpska. In October 2005, Serbia and Montenegro opened discussions with the European Union on a "stabilisation and association agreement" widely seen as the preliminary step to formal adhesion talks at a later stage. Olli Rehn, EU Enlargement Commissioner, has stated that if Serbia and Montenegro continue to fail to hand over Karadžić and Mladić, those talks could be suspended. To date, Serbia and Montenegro have failed do so, and I urge the international community to maintain its pressure on this matter.

37. In early November 2005, my predecessor travelled to Serbia to meet with Prime Minister Koštunica concerning outstanding matters between the government and the Tribunal. A primary topic of discussion was Serbia's failure to deliver to the Tribunal the remaining fugitives. During that meeting, Prime Minister Koštunica spoke of his full commitment to fulfilling Serbia's legal obligations. However, as my predecessor commented, the record of Serbia and Montenegro's commitment will be assessed by actions and results, not by words and mere promises.

38. Since the submission of the last report, the number of remaining fugitives has been reduced from ten to seven with the arrest of three indictees. Two of these fugitives are currently in the custody of Member States and negotiations are underway to ensure their transfer to The Hague. One of these fugitives, Milan Lukić, is in the custody of the Argentine authorities. Unfortunately, the transfer of

Lukić has been hindered by an application for his extradition by Serbia and Montenegro. Officials of the Tribunal travelled to Argentina in September 2005 in order to ensure the transfer. The Tribunal's primacy in this matter was recognised by the Argentine authorities but those authorities wish to dispose of the extradition request of Serbia and Montenegro before they transfer Lukić to the Tribunal. The other fugitive, Dragan Zelenović, has been detained by the Russian authorities. In October 2005, the Tribunal received a Note Verbale from the Russian Embassy confirming the detention of Zelenović and a request that consultations be held with representatives of the Tribunal and The Netherlands on the modalities of the transfer of Zelenović to The Hague. Tribunal officials travelled to Moscow in November 2005 as requested by the Russian authorities, and it is hoped that Zelenović will be transferred shortly. The third fugitive, Sredoje Lukić, was transferred to the Tribunal's custody on 16 September 2005 from Republika Srpska after being at large for nearly seven years.[9]

39. Of the remaining seven fugitives, Ratko Mladić, Radovan Karadžić and Ante Gotovina of course remain the most notorious. As has been emphasised by previous Presidents of this Tribunal, these three fugitives in particular cannot wait the Tribunal out. The Tribunal simply cannot close its doors until these fugitives have been tried.

III. Updated prognosis regarding implementation of the completion strategy

1. Recapitulation of the May 2005 estimate

40. In May 2005, the previous President reported to the Security Council that giving an estimate at that stage of when the Tribunal will finish its work was an exercise in guesswork. However, he stated that it was definitely not feasible to envisage an end of all trial activity at the Tribunal by the end of 2008. This was due to the large number of indictees and fugitives who had arrived at the Tribunal since the last report as well as the filing and confirmation of seven new or amended indictments by the Prosecution involving thirteen accused. He predicted that trials will have to run in 2009 and based that assessment on assumptions that all Rule 11*bis* motions are granted, all possible motions for joinder are granted, the arrival of no new fugitives and no new guilty pleas being entered.

41. In this report, I can confirm that trials will indeed run into 2009. This is due to the factors mentioned by my predecessor in the May 2005 report. The filing of new indictments by the Prosecutor at the close of 2004 and the large number of accused that were transferred to the Tribunal in the last year will inevitably have an impact on the Tribunal's completion strategy dates.

2. Current Estimates

42. Whether trials will indeed conclude by the end of 2009 is subject to a number of factors, which are by no means certain. As noted above, the Tribunal has forged ahead with the joinder of cases into single trials of multiple accused. However, of the three joinder motions filed by the Prosecution, two have been granted. The third of the joinder motions was refused by the Trial Chamber and the

[9] *See* Enclosure III

Prosecution has not appealed that decision. I must also emphasise that the impact that joinder of cases will have on the efficiency of trials at the Tribunal remains untested. It is possible that they may actually result in some delay if, for example, the entire trial must be stopped due to the illness of one or more accused. Nonetheless, I can assure the Council that all efforts are being taken by the pre-trial Judges assigned to cases of multiple accused to ensure proper pre-trial preparation. Talks are also underway between the Registry, Prosecution and Association of Defence Counsel to devise ways to ensure these trials run as smoothly as possible.

43. Further, the Tribunal's work with the authorities of Bosnia and Herzegovina and the Office of the High Representative for Bosnia and Herzegovina in the establishment of the Special War Crimes Chamber in Sarajevo on 9 March 2005 has begun to bear fruit with the successful referral of two accused to that Court. In addition, the Tribunal has begun to refer cases to Croatia and the first case to be referred, *Ademi and Norac*, was not appealed by either party. Therefore, four accused in total have been referred thus far. If all of the cases in which there are pending 11*bis* motions are successfully referred, this will remove 11 more accused or 10 additional cases from the Tribunal's docket in total (this includes Zelenović currently in the custody of Russia and Lukić currently in the custody of Argentina). I note however that, as stated previously, one motion has been denied, one motion was withdrawn by the Prosecution, and the Prosecution has indicated it will soon withdraw another 11*bis* motion. Consequently, five accused proffered by the Prosecution have not been transferred thus far. Also, as stated previously, there is the possibility under our Rules that referred cases could be deferred back to the Tribunal. Should this occur, it will inevitably impact upon the projected completion strategy dates and may result in some delay.

44. With regard to guilty pleas, two accused have pled guilty since the last report. In July 2005, Miroslav Bralo pled guilty and the sentencing hearing was held in October. The Sentencing Judgement is due to be issued shortly. The other accused, Ivica Rajić, who pled guilty in October, was the subject of an 11*bis* referral motion, which the Prosecutor has indicated will be withdrawn after the sentencing hearing. While guilty pleas generally have great potential for speeding up the work of the Tribunal, the impact of the guilty pleas of these accused on the Tribunal's completion dates are minimal. Bralo was intended to be the subject of an 11*bis* motion by the Prosecution and Rajić, as previously noted, was the subject of a Rule 11*bis* motion.

45. The assessment given by my predecessor of trials finishing during 2009 remains possible provided that, as noted above, the joinder of cases and Rule 11*bis* referrals run smoothly and if some of the accused currently awaiting trial enter guilty pleas, which actually impact upon the Tribunal's caseload. Other factors, however, may impinge upon the accuracy of that assessment. For example, the projected completion strategy dates may be impacted by unforeseen issues causing disruption to trials including the ill-health of some of our accused, the changing of Counsel during the proceedings, and an increased number of contempt cases brought before the Tribunal. Since the May 2005 report, four contempt cases involving six accused are in progress. Of primary importance is the trial of the Tribunal's three most notorious fugitives – Karadzić, Mladić and Gotovina. If these fugitives are arrested in the near future, then the completion of all trials at the close of 2009 remains feasible. However, the longer their arrival is delayed, the greater the likelihood that trials will continue past 2009. It is absolutely crucial that the international community do its utmost, and that includes the

States of the former Yugoslavia, to ensure that these fugitives are delivered to the Tribunal without further delay.

46. Bearing in mind the uncertain variables just mentioned, providing a current estimate as to the conclusion of the Tribunal's work still remains an exercise in guesswork. To reiterate, if all fugitives are apprehended and delivered to the Tribunal shortly, then the current estimate of the end of 2009 remains realistic. If, however, remaining fugitives are not delivered within the coming months, their late delivery may well push the completion of all trials beyond that date.

IV. Conclusion

47. As stated by my predecessor in the May 2005 report to the Security Council, "this is without doubt the most active and productive period in the life of the Tribunal thus far, a period full of challenges, stresses and strains." At present, the exact completion date for the Tribunal's work still cannot be precisely stated. I can confirm that we should be able to finish with all trials by the end of 2009 provided that all future motions for joinder are granted and the trials of multiple accused run smoothly; that all remaining Rule 11*bis* motions are granted; that the number of contempt cases are at a minimum; and that remaining fugitives, especially Karadzić, Mladić and Gotovina, are apprehended within the coming months. If these assumptions are not realised, then trials may well be pushed beyond that date. On the other hand, other factors which may contribute to making the end of 2009 feasible as a date for finishing trials include the entry of new guilty pleas and the possible construction of a fourth courtroom.

48. I assure the Security Council that the Tribunal remains fully committed to its completion strategy and will continue to do all in its power to discharge its mandate as effectively as possible. I trust that the achievements and progress by the Tribunal summarised in this report are evidence of that absolute commitment to search for ways to maximize the efficiency and efficacy of the Tribunal without sacrificing due process norms.

49. To that end, the Judges of the Tribunal will continue to focus on the Rules looking for further possible amendments that will expedite proceedings. The Working Group on Speeding up Trials is due to publish its final report shortly, and I anticipate concrete proposals that will have a positive impact on accelerating pre-trial and trial proceedings. With the granting of the joinder motions, pre-trial Judges are working closely with the parties to ensure that these cases are conducted as orderly and expeditiously as possible. The issue of the viability of building a fourth courtroom remains on the table and the Report of the Working Group on Speeding up Trials and the cost/benefit analysis of the Registrar are being closely studied. A final decision on the project is imminent. As the Appeals Chamber's workload increases, consideration is still being given to increasing the capacity of the Appeals Chamber by having two Benches of five Judges available for the disposition of appeals.

50. In establishing the Tribunal, the Council made an historic decision to restore international peace and security through international justice. Because of the existence of this Tribunal, victims of genocide, war crimes and crimes against humanity have been vindicated as the perpetrators have been brought to justice. Simultaneously, the Council has demonstrated to the world through this Tribunal

that international criminal justice, which respects fundamental due process norms, is possible. The Tribunal has served as an inspiration and an example for the formation of other international criminal courts and tribunals. It is crucial that the message and legacy of the Tribunal not be lost by a closing of its doors without all remaining fugitives being tried. The Tribunal must complete its mandate such that the fundamental lesson of the Tribunal remains — that the international community will not tolerate such crimes and will not allow them to go unpunished.

Enclosure I

1. Persons Convicted or Acquitted after Trial between 25 May 2005 and 30 November 2005 (4 persons)				
Case	**Name**	**Former Title**	**Initial Appearance**	**Judgement**
1	Sefer Halilović	Military Commander, ABiH	27-Sept-01	16-Nov-05 (Acquitted)
2	Fatmir Limaj	Commander, KLA	5-Mar-03	30-Nov-05 (Acquitted)
3	Isak Musliu	Prison Camp Commanders, KLA	20-Feb-03	30-Nov-05 (Acquitted)
4	Haradin Bala	Prison Camp Commanders, KLA	20-Feb-03	30-Nov-05 (Convicted)

* For period prior to 5 November 2004 Refer to Annex I, Enclosure I of the Previous Report, S/2004/897. Thus, from the inception of the Tribunal to 25 May 2005, in 20 trials, a total of 36 persons have been convicted and 3 persons acquitted. Three of the 36 convictions were later reversed on appeal.

2. Persons Pleading Guilty between 25 May 2005 and 30 November 2005 (2 persons)				
Case	**Name**	**Former Title**	**Initial Appearance**	**Judgement**
1	Miroslav Bralo	Member, HVO Special Forces ("The Jokers")	15-Nov-04	[Awaiting sentencing]
2	Ivica Rajić	HVO Operational Group Commander	27-June-03	[Awaiting sentencing]

* For the period prior to 5 November 2004 Refer to Annex I, Enclosure I of the Previous Report, S/2004/897. Thus, from the inception of the Tribunal to 25 May 2005, a total of 19 persons have pleaded guilty in a total of 15 cases.

3. Persons Convicted of Contempt between 25 May 2005 and 30 November 2005 (0 persons)			
Case	**Name**	**Initial Appearance**	**Judgement**
There were no persons convicted of contempt between 25 May 2005 and 30 November 2005.			

Legend:

ABiH: Army of Bosnia and Herzegovina
HVO: Croatian Defence Council
KLA: Kosovo Liberation Army

Enclosure II

1. Trials in Progress (8 accused, 5 cases)				
Case	**Name**	**Former Title**	**Initial Appearance**	**Comments**
1	Slobodan Milošević	President, FRY	3-Jul-01	"Kosovo, Croatia & Bosnia" Judgment expected late 2006
2	Naser Orić	Military and Police commander, BiH	15-Apr-03	"Srebrenica" Judgement expected June 2005
3	Enver Hadžihasanović	Brig Commander, ABiH	9-Aug-01	"Central Bosnia" Judgment expected January 2006
	Amir Kubura	Commander, ABiH	9-Aug-01	
4	Momčilo Krajišnik	President of RS National Assembly	7-Apr-00	"Bosnia & Herzegovina" Judgment expected July 2006
5	Mile Mrkšić	Colonel and Commanding Officer, JNA	16 May 2002	Trial commenced 10 October 2005
	Miroslav Radić	Captain, JNA	16 May 2002	
	Veselin Šljivančanin	Major, JNA	3 July 2003	
	Total Persons: 8			

All figures as of 30 November 2005

2. Contempt Cases in Progress (6 accused, 4 cases)			
Case	**Name**	**Initial Appearance**	**Comments**
1	Stjepan Šešelj	14 June 2005	Assigned to Trial Chamber
	Domagoj Margetić		
2	Ivica Marijačić	14 June 2005	Assigned to Trial Chamber
	Markica Rebić		
3	Josip Jović	14 October 2005	Assigned to Trial Chamber
4	Marijan Križić	26 September 2005	Assigned to Trial Chamber
	Total Persons: 6		

All figures as of 30 November 2005

Legend:

ABiH Army of Bosnia and Herzegovina
BiH Bosnia and Herzegovina
FRY Federal Republic of Yugoslavia
JNA Yugoslav People's Army
RS Republika Srpska

Enclosure III

1. New Arrivals and Remaining Fugitives					
1. Arrivals at the Tribunal between 25 May 2005 – 30 November 2005					
	Name	**Former Title**	**Place of crime**	**Arrival Date**	**Initial Appearance**
1	Sredoje Lukić	Member, Bosnian-Serb-run Special Operations Military Unit ("White Eagles")	Višegrad, BiH	16-Sept-05	20-Sept-05
Total new arrivals in reporting period: 1					

2. Remaining Fugitives				
	Name	**Former Title**	**Place of Crime**	**Date indictment**
1	Radovan Karadžić	President, RS	BiH	25-Jul-95
2	Ratko Mladić	Commander, Main Staff, VRS	BiH	25-Jul-95
3	Ante Gotovina	Commander, Split Military District, HV	Krajina, Croatia	31-May-01
4	Milan Lukić*	Member, Bosnian-Serb-run Special Operations Military Unit ("White Eagles")	Višegrad, BiH	21-Oct-98
5	Dragan Zelenović**	Sub Commander, Military Police, Serb forces	Foča, BiH	20-Apr-01
6	Vlastimir Đorđević	Assistant Minister, Serbian Ministry of Internal Affairs, VJ	Kosovo	25-Sep-03
7	Goran Hadžić	President, "SAO SBWS"	Croatia	28-May-04
8	Stojan Župljanin	Head or Commander of the Serb Operated Regional Security Services Centre	Krajina, Croatia	6-Oct-04
9	Zdravko Tolimir	Assistant Commander, Intelligence and Security of the Main Staff, VRS	Srebrenica and Zepa	10-Feb-05
	Total Remaining Indictees: 9			

* *In custody in Argentina, awaiting transfer*

** *In custody in Russia, awaiting transfer*

Legend:

HV: *Croatian Army*
RS: *Republika Srpska*
SAO SBWS: *Serbian Autonomous District, Slavonia Baranja and Western Srem*
VRS: *Bosnian Serb Army*
VJ: *Armed Forces of the Federal Republic of Yugoslavia*

Enclosure IV

Accused Awaiting Trial as of November 2005 (44 accused, 18 cases)			
Case	**Name**	**Former Title**	**Initial Appearance**
1	Pasko Ljubičić	Commander 4th Military Police Battalion, HVO	30-Sept-01
2	Dušan Fuštar	Shift Commander, Serb-run Omarska Detention Camp, BiH	6-Feb-02
	Momčilo Gruban	Shift Commander, Serb-run Omarska Detention Camp, BiH	10-May-02
	Dušan Knežević	Detention Camp staff, Serb-run Omarska Detention Camp, BiH	24-May-02
	Željko Mejakić	Commander, Serb-run Omarska Detention Camp, BiH	7-Jul-03
3	Dragoljub Ojdanić*	Chief of Staff, VJ	26-Apr-02
	Nikola Šainović*	Deputy Prime Minister, FRY	3-May-02
	Milan Milutinović*	President Republic of Serbia	27-Jan-03
	Vladimir Lazarević*	Commander, Pristina Corps, VJ, Kosovo	7-Feb-05
	Sreten Lukić*	Head Staff, Serbian Ministry of Internal Affairs, VJ, Kosovo	6-Apr-05
	Nebojša Pavković	General, Commander 3rd VJ Army, Kosovo	25-Apr-05
4	Milan Martić	President, "RSK"	21-May-02
5	Vojislav Šešelj	President, SRS	26-Feb-03
6	Franko Simatović*	Commander, Special Operations Unit, State Security Services ("DB"), Republic of Serbia	2-Jun-03
	Jovica Stanišić*	Head, State Security Services ("DB"), Republic of Serbia	12-Jun-03
7	Mitar Rašević	Commander, Serb-run Kazneno-Popravni Dom prison guards, BiH	18-Aug-03
	Savo Todović	Deputy Commander, Serb-run Kazneno-Popravni Dom prison guards, BiH	19-Jan-05
8	Vladimir Kovačević*	Commander, JNA	3-Nov-03
9	Jadranko Prlić*	President, "Herceg-Bosna"	6-Apr-04
	Bruno Stojić*	Head Department of Defence, "Herceg-Bosna"	
	Slobodan Praljak*	Assistant Minister Defence, "Herceg-Bosna"	
	Milivoj Petković*	Commander, HVO	
	Valentin Ćorić*	Chief of Military Police Administration, HVO	
	Berislav Pušić*	Military Police Commanding Officer, HVO	
10	Ljubiša Beara	Colonel, Chief of Security, VRS	12-Oct-04
	Drago Nikolić	Chief of Security, Drina Corps, VRS	23-Mar-05
	Ljubomir Borovčanin	Deputy Commander, Ministry of Interior Special Police Brigade, RS	7-Apr-05
	Vujadin Popović	Lt. Colonel, Assist. Commander, Drina Corps, VRS	18-Apr-05
	Vinko Pandurević	Commander, Zvornik Brigade, VRS	31-Mar-05
	Milorad Trbić	Deputy Commander, 3rd Battalion, Zvornik Brigade, VRS	13-Apr-05
	Milan Gvero*	Assistant Commander, VRS	2-Mar-05
	Radivoje Miletić*	Chief of Operations, Deputy Chief of Staff, VRS	2-Mar-05

	Name	Former Title	Initial Appearance
11	Ivan Čermak*	Assistant Minister Defence, Commander of Military Police, Croatia	12-Mar-04
	Mladen Markač*	Special Police Commander, Croatia	
12	Dragomir Milošević	Chief Commander, Romanija Corps, VRS	7-Dec-04
13	Rasim Delić*	Commander, ABiH	3-Mar-05
14	Momčilo Perišić*	Chief of General Staff, VJ	9-Mar-05
15	Ramush Haradinaj*	Commander, KLA	14-Mar-05
	Idriz Balaj	Commander, KLA	14-Mar-05
	Lahi Brahimaj	Deputy Commander, KLA	14-Mar-05
16	Mićo Stanišić*	Minister, Internal Affairs, RS	17-Mar-05
17	Johan Tarčulovski	Personal Security Officer for President, FYROM	21-Mar-05
	Ljube Boškoski	Minister of Interior, FYROM	1-Apr-05
18	Sredoje Lukić	Member, Bosnian-Serb-run Special Operations Military Unit ("White Eagles")	20-Sept-05
	Total Persons: 44		

* *On provisional release. In total, there are 22 Accused awaiting trial and 2 awaiting judgement that are on Provisional Release.*

Note: Ivica Rajic has plead guilty, and remains in custody until sentencing.

Legend:

ABiH - Army of Bosnia and Herzegovina
BiH - Bosnia and Herzegovina
FYROM - Former Yugoslav Republic of Macedonia
"Herceg-Bosna" - Croatian Republic of Herceg-Bosna
HVO – Croatian Defence Council
JNA – Yugoslav People's Army
KLA – Kosovo Liberation Army
RS - Republika Srpska
"RSK" - Republic of Serbian Krajina
SRS – Serbian Radical Party
VRS – Bosnian Serb Army
VJ - Armed Forces of the Federal Republic of Yugoslavia

Enclosure V

11bis motions pending as of 30 November 2005 (11 accused, 10 cases)				
Case	**Name**	**Former Title**	**Motion filed**	**Status**
1	Dušan Fuštar	Shift Commander, Serb-run Omarska Detention Camp, BiH	02-Sep-04	Motion granted, pending appeal
	Momčilo Gruban	Shift Commander, Omarska Detention Camp, BiH		
	Dušan Knežević	Detention Camp staff, Omarska, BiH		
	Željko Mejakić	Commander, Omarska Detention Camp, BiH		
2	Dragan Zelenović*	Sub-commander Military Police, paramilitary leader, Foča, BiH	21-Sep-04	Motion granted, pending appeal
3	Vladimir Kovačević	Commander, JNA	28-Oct-04	Pending decision
4	Savo Todović	Deputy Commander, Foča Kazneno-Popravni Dom prison staff, BiH	01-Nov-04	Motion granted, pending appeal
	Mitar Rašević	Commander, Foča Kazneno-Popravni Dom prison guards, BiH	04-Nov-04	Motion granted, pending appeal
5	Sredoje Lukić	Member, Serb paramilitary unit, BiH	01-Feb-05	Pending decision
	Milan Lukić*	Member, Serb paramilitary unit, BiH		
6	Pasko Ljubičić	Commander, HVO	04-Nov-04	Pending decision
	Total Persons: 11			

* fugitive

11bis motions granted as of 30 November 2005 (4 accused, 3 cases)				
Case	**Name**	**Former Title**	**Motion filed**	**Status**
1	Rahim Ademi	Major-General, HVO	02-Sep-04	Case referred to Croatia 14 Sept. 2005 *(Decision not appealed)*
	Mirko Norac	Commander, HVO		
2	Radovan Stanković	Para Military Unit, Serb forces, Foča, BiH	21-Sep-04	Case referred to BiH 17 May 2005 *(Affirmed on appeal 1 Sept. 2005)*
3	Gojko Janković	Military Police Commander, Serb forces, Foča, BiH	21-Sep-04	Case referred to BiH 22 July 2005 *(Affirmed on appeal 15 Nov. 2005)*
	Total Persons: 4			

11bis motions denied as of 30 November 2005 (1 accused, 1 case)				
Case	Name	Former Title	Motion filed	Status
1	Dragomir Milošević	Chief Commander, Romanija Corps, VRS	31-Jan-05	Motion to refer denied 8 July 2005
	Total Persons: 1			

11bis motions withdrawn as of 30 November 2005 (4 accused, 2 case)				
Case	**Name**	**Former Title**	**Motion filed**	**Status**
1	Mile Mrkšic	Colonel and Commanding Officer, JNA	08-Feb-05	OTP withdrew motion on 30 June 2005
	Mile Radic	Captain, JNA		
	Veselin Šljivančanin	Major, JNA		
2	Ivica Rajic	Commander, HVO	28-July-05	OTP filed notice to withdraw motion on 10 Nov. 2005 after guilty plea on 26 Oct. 2005
	Total Persons: 4			

Legend *BiH: Bosnia and Herzegovina* *JNA: Yugoslav People's Army*
HVO: Croatian Defence Council *VRS: Bosnian Serb Army*

Enclosure VI

APPEALS COMPLETED FROM 26 MAY 2005 TO 30 NOVEMBER 2005 [1]

(with date of Filing and Decision)

INTERLOCUTORY

ICTY		
Naser Oric IT-03-68-AR73.2		06/07/05-20/07/05
Boskovski and Tarculovski IT-04-82-AR 72.1		15/06/05-22/07/05
Hadzihasanovic & Kubura IT-01-47-Ar65.3 (*confidential*)		25/07/05-29/07/05
Halilovic IT-01-48-AR 73.2		06/07/05-19/08/05
Halilovic IT-01-48-Ar65.1 (*confidential*)		29/07/05-13/09/05
Milosevic IT-02-54-AR108bis.2 (*confidential*)		22/07/05-20/09/05
Boskovski&Tarculovski IT-04-82-AR 65.1		21/07/05-28/09/05
Pandurevic & Trbic IT-05-86-Ar65.1		25/07/05-03/10/05
Boskovski&Tarculovski IT-04-82-AR 65.1		21/07/05-04/10/05
Krajisnik IT-00-39- Ar98.1		16/09/05-04/10/05
Todovic IT-97-25/1-Ar65.1		29/07/05-07/10/05
Stanisic IT-04-79-Ar65.1		25/07/05-17/10/05
Tolimir, Miletic & Gvero IT-04-80-Ar65.1		22/07/05-19/10/05
Popovic IT-02-57-Ar65.1		27/07/05-28/10/05
Milutinovic IT-05-87-Ar65.1		27/09/05-01/11/05
Petkovic IT-04-74-Ar72.1		12/10/05-16/11/05
Rajic IT-95-12-Ar 65.1		04/10/05-16/11/05
ICTR		
Nsengimana ICTR-01-69-A		19/07/05-24/08/05
Bagosora ICTR-98-41-Ar73		01/08/05-06/10/05
Bagosora ICTR-98-41-Ar73 (OTP)		04/08/05-06/10/05
Nzirorera ICTR-98-44-Ar72.5		19/08/05-14/10/05
Nzirorera - ICTR-98-44-AR72.6		19/09/05-14/11/05
Bizimungu – ICTR-99-50-AR73		04/10/05-16/11/05

FROM JUDGEMENT

ICTY		
Babi}	IT-03-72-A	16/07/04-18/07/05
Deronji}	IT-02-61-A	14/04/04-20/07/05
Joki}	IT-01-42/1-A	23/04/04-30/08/05
ICTR		
Kamuhanda	ICTR-99-54-A	03/02/04-19/09/05

CONTEMPT

ICTY	
Milosevic IT-02-54-Ar77.4	27/05/05-29/08/05

REFERRAL

ICTY	
Stankovic IT-96-23/2-Ar11.bis.1	25/05/05-01/09/05
Jankovic IT-96-23/2-Ar11bis.2	05/08/05-16/11/05

REVIEW

[1] **Total number of Appeals Completed from 26 May 2005 = 30**

Interlocutory Appeals – 23 Contempt – 1 Referral – 2
Appeals from Judgement – 4 Review – 0

Enclosure VII

APPEALS CHAMBER SUMMARY 2005

APPEALS pending as of 30 November 2005 [2]
(with date of filing)

INTERLOCUTORY

ICTY	
Delic IT-04-83-Ar72	21/07/05
Jankovic IT-96-23/2-Ar65.1	03/10/05
Tolimir et al (Pandurevic) IT-05-86-Ar73.1	11/10/05
Tolimir et al IT-04-80-Ar.73.1	13/10/05
Haradinaj IT-04-84-Ar65.1	19/10/05
Lahi Brahimaj IT-04-84-AR65.2	10/11/05
Drago Nikokic IT-05-88-AR65.1	17/11/05
ICTR	
Nzirorera ICTR-98-44-Ar72.6	14/10/05
Nzirorera - ICTR-98-44-AR72	14/10/05

APPEALS FROM DECISIONS OF THE PRESIDENT

ICTR	
Bagilishema ICTR-95-1A-A	22/11/05

FROM JUDGEMENT

ICTY		
Martinovic/Naletelic IT-98-34-A		07/04/03
Staki}	IT-97-24-A	11/08/03
Simi}	IT-95-9-A	17/11/03
Gali}	IT-98-29-A	15/12/03
Nikoli}	IT-02-60/1-A	30/12/03
Brđanin	IT-99-36-A	30/09/04
Blagojevic/Jokic	IT-02-60-A	23/02/05
Strugar	IT-01-42-A	02/03/05
ICTR		
Media	ICTR-99-52-A	12/12/03
Cyangugu	ICTR-99-46-A	04/03/04
Gacumbitsi	ICTR-01-64-A	16/07/04
Ndindabahizi	ICTR-01-71-A	13/08/04
Muhimana	ICTR-95-1B-A	20/05/95

REFERRAL

Rasevic & Todovic IT-97-25/1-Ar11bis.1	25/07/05
Mejakic IT-02-65-Ar11bis.1	04/08/05

REVIEW

ICTY		
Blaskic	IT-95-14-R	29/07/04
ICTR		
Niyitegeka	ICTR-96-14-R	27/10/04

[2] **Total number of Appeals pending = 27**

Interlocutory Appeals = 9 — Contempt = 0 — Referral = 2
Appeals from Judgement = 13 — Review = 2 — From decision of President = 1

ANNEX II- ASSESSMENT OF CARLA DEL PONTE, PROSECUTOR OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, PROVIDED TO THE SECURITY COUNCIL PURSUANT TO PARAGRAPH 6 OF SECURITY COUNCIL RESOLUTION 1534

INTRODUCTION

1. As a follow-up to the last assessment of 13 June 2005, the present report provides an updated assessment of the progress made towards implementing the completion strategy of the Tribunal. It outlines the measures already taken and indicates the steps that remain to be taken.

2. The first objective of the completion strategy was to conclude all new investigations by 31 December 2004. This first major milestone, which entirely relied on the activities and efforts of the Prosecutor and her Office, was reached as planned. By the end of last year, the investigation of all remaining targets had been completed and the final indictments were presented for confirmation and subsequently all of them were confirmed by the Chambers. The Office of the Prosecutor remains fully committed to do its utmost, within the framework of its mandate, to meet the other objectives of the completion strategy in close co-operation with the President and the Chambers.

3. The completion strategy is twofold: first, to try those bearing the gravest responsibility for the crimes, including the high-profile fugitives, and thus complete its activities in a swift and efficient, yet fair and impartial, manner; second, to transfer cases involving mid- and lower-level perpetrators to the domestic jurisdictions of the territories of the former Yugoslavia. Three cases involving four accused have already been transferred to Bosnia and Herzegovina and to Croatia and six other motions involving twelve accused are pending before the Chambers.

4. Unfortunately, the successful achievement of the completion strategy remains hampered by the very same problem that has been raised by the ICTY on numerous occasions: some of the principal perpetrators, especially Radovan Karadzic and Ratko Mladic, who are both accused of genocide, remain at large. The fact that these fugitives remain at large is not only an affront to justice but also undermines the completion strategy by making it impossible to join these fugitives to pending cases. Thus, the day that their trials can be commenced is pushed further and further into the future.

PROGRESS MADE TOWARDS THE IMPLEMENTATION OF THE COMPLETION STRATEGY

5. In the reporting period, one accused, Sredoje Lukic, was surrendered to the custody of the Tribunal. He was indicted on 26 October 1998 and is charged with seven counts of crimes against humanity and five counts of violations of the laws and customs of war. These crimes were

committed against the Muslim population of Visegrad, in eastern Bosnia and Herzegovina. He was transferred to The Hague by the authorities of Republika Srpska within Bosnia and Herzegovina on 16 September. He had been hiding for years in Russia, and the Serbian authorities co-operated to facilitate his transfer to The Hague. Furthermore, two accused are detained in third countries pending their transfer to The Hague. Milan Lukic, who was indicted together with his relative Sredoje Lukic, for the same crimes, was arrested on 8 August in Argentina. Dragan Zelenovic was arrested by the Russian authorities on 22 August. He is charged with seven counts of crimes against humanity and seven counts of violations of the laws or customs of war. He is, in particular, accused of multiple cases of rape against Muslim women in Foca, in the eastern part of Bosnia and Herzegovina. It seems the long delays before the transfer of these two fugitives are due to domestic administrative and technical legal reasons.

6. These three accused are mid-level perpetrators, and motions have been filed to request their transfer to Bosnia and Herzegovina. It is urgent that these accused are transferred to The Hague so that the Chambers can decide on the prosecution's motions. Therefore, the prosecutor calls on Argentina and Russia to speed up the respective processes.

7. Seven persons indicted by the ICTY are still at large. One year ago, there were twenty. As previously reported, ten fugitives were transferred to The Hague before the prosecutor's last report to the Council, and three were brought to custody in the reporting period. Unfortunately, the most important indictees, including those mentioned in several Security Council resolutions, Radovan Karadzic, Ratko Mladic and Ante Gotovina, have not yet appeared in The Hague. The Office of the Prosecutor has increased its efforts to help locate and apprehend them. The Prosecutor has taken initiatives in order to better co-ordinate the activities carried out by the various national authorities and international bodies in order to locate and arrest them. In particular, she encouraged the relevant bodies of Serbia, Montenegro and Bosnia and Herzegovina to intensify their exchanges of information and their operational co-operation. She also held numerous meetings with NATO, EUFOR and senior national officials of many countries to request their political and operational support.

Transfer of cases

8. Over the last eighteen months, the Prosecutor's Office has taken various initiatives in order to prepare for the transfer of indicted cases to the domestic jurisdictions of Bosnia-Herzegovina, Croatia and Serbia and Montenegro. Adequate legislative and institutional frameworks were created in the countries of the former Yugoslavia, and the Organisation for Security and Co-operation in Europe has agreed to work with the Prosecutor on monitoring the cases transferred by the ICTY. In accordance with the Security Council resolutions 1503 and 1534, which prescribes that only the most senior leaders responsible for the most serious crimes must be tried in The

Prosecutor between 1 September 2004 and 28 July 2005, requesting the deferral of indicted cases pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence. So far, one case involving two accused was transferred to Croatia and two cases with one accused each were transferred to Bosnia and Herzegovina. One motion involving three accused was withdrawn by the prosecution.

while another motion involving one accused was denied by the Chambers. In another case, the accused, Ivica Rajic, has plead guilty on 26 October 2005. Another accused who was intended to be transferred to Bosnia and Herzegovina in accordance with Rule 11*bis*, Miroslav Bralo, plead guilty on 19 July 2005. The six remaining motions are at various stages of the procedure.

9. Even after the transfer of these indicted cases to national jurisdictions, the Office of the Prosecutor is not completely discharged of all its obligations regarding them. Under the applicable Rule, the Prosecutor may monitor proceedings in the national courts, and the OSCE has agreed that it will monitor these trials, also on behalf of the Prosecutor. The Chambers have furthermore ordered the Prosecutor to report at regular intervals on the proceedings. Under Rule 11*bis*, the ICTY remains able to revoke the transfer of a case, should it assess that a fair trial is not being conducted.

10. In addition to these transfers of indicted cases under Rule 11*bis*, the OTP has also started to handover non-indicted cases, i.e. investigative material, to national prosecutors for their review and further investigations. Co-operation has been launched with the relevant authorities in Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia and Serbia for this purpose. For instance, the OTP will provide the State Prosecutor of Bosnia and Herzegovina with more than a dozen such non-indicted cases involving about 40 suspects.

Measures taken to improve judicial efficiency

11. The OTP has been actively working on joining cases involving the same crime base. The multiple accused trials will result in a number of efficiencies and savings by allowing for multiple trials to be consolidated into one trial, thus saving considerable time and courtroom space. In particular, the crime base will not need to be proven repeatedly, and therefore the same testimony and evidence can be heard only once rather than in multiple trials. One motion involving seven accused indicted for crimes committed in Kosovo was filed on 1st April 2005. The Chambers took a positive decision on 8 July 2005. A second motion was filed on 10 June 2005 with a view to join the cases of nine persons accused for the Srebrenica genocide. A positive decision was taken by the Chambers on 21 September 2005. Both trials are scheduled to begin towards the middle of 2006. However, there is one remaining fugitive in each of the two cases, Vlastimir Djordjevic for the Kosovo case and Zdravko Tolimir for the Srebrenica case. These two accused will have to be tried separately, even though the crime base is the same as their co-accused, if they are not brought to The Hague in the next weeks, thereby causing significant efficiency losses, including court time and travel for witnesses as well as repetition of trials.

12. On 19 July, the Prosecution filed a third motion requesting the joining of three cases involving four accused, Milan Martic, Jovica Stanisic, Franko Simatovic and Vojislav Seselj. The Trial Chamber denied this motion on 10 November 2005. As a result, three trials will have to be conducted instead of one.

13. The Prosecutor's policy of joining accused in a single trial was applied previously in the case Prlic

Measures taken to improve the management and efficiency of the Office of the Prosecutor

14. The management of the Office closely reflects the progress made in the implementation of the completion strategy. 2006 will be the busiest period in the ICTY's life, with the advent of multi-accused trials. Thus, in 2006 we expect to have some 33 accused on trial as opposed to 12 in 2005. Despite this increased activity to meet the completion strategy, significant reductions in staff were made in the Office of the Prosecutor following the achievement of the first phase of the completion strategy, and the size of the investigation division has been reduced by 37% or 79 posts. Furthermore, in the context of the 2006-2007 biennial budget, the redeployment of 15 posts from the investigation division to the prosecution division and the appeals section has been proposed. This move is aimed at addressing the increased trial activities resulting from the multi-accused trials and the growing appeals work load as envisaged by the completion strategy. The budget also foresees a reduction on non-post items, such as travel and General Temporary Assistance, resulting from efforts to streamline our processes. The proposed OTP budget for 2006-7 amounts to $72 million and reflects an overall net reduction in posts and non-posts amounting to over $11 millions or 13.7% in comparison with the 2004-5 OTP budget.

15. It should be emphasised once more that the end of investigations does not mean the end of all investigative activities. The term "Investigation" is defined in Rule 2 of the Tribunal's Rules of Procedure and Evidence as meaning:

    a. *"All activities undertaken by the Prosecutor under the Statute and the Rules for collection of information and evidence, whether before or after an indictment is confirmed."* (emphasis added).

    Skilled investigators and the other staff in the Investigation Division, such as the criminal, political, and military analysts remain essential for the prosecution process, including both in the pre-trial and in the trial phases, as well as during the appeal stage.

16. Several measures were taken to increase the administrative and judicial efficiency of the OTP. There has been an increased focus on coordination of legal issues within the Office, and the Prosecutor strongly supported steps to shorten the 98*bis* procedure, thus saving months off each trial. Furthermore, the OTP has increased its efforts to make an effective use of IT technology in the pre-trial and trial phases.

EXTERNAL FACTORS IMPACTING ON THE IMPLEMENTATION OF THE COMPLETION STRATEGY

Arrest of Fugitives

17. The main factor hampering the implementation of the completion strategy has been and remains the failure to arrest and transfer all persons indicted by the Tribunal. In the reporting period, only three accused were taken into custody, compared to twenty in the previous period, and two of [illegible] In her last report to the Council, the Prosecutor

Herzegovina seemed to have reached their limits. This assessment proved to be correct. There are several reasons for that.

18. First, the seven remaining fugitives are less likely to accept to surrender voluntarily than the accused who were transferred in the first part of this year. Therefore, arrest operations must be carried out, which are considered by the various authorities as risky both politically and operationally. Second, those remaining fugitives are well organised, funded and continue to enjoy the protection of powerful support networks, both within and outside State institutions. The Prosecutor expects the relevant States to intensify the collection of reliable intelligence on their whereabouts so as to be able to launch successful arrest operations. Third, it has to be reminded that the arrest of ICTY fugitives is an obligation of all States. Certain international organisations, such as NATO and EUFOR in Bosnia and Herzegovina, also have the mandate to conduct or support operations against persons indicted by the ICTY. The activities of the international community in this context have not been conducted in an efficient manner over the past years. They have in particular demonstrated grave deficiencies in the co-ordination and sharing of information, and have not led to results. The last time a fugitive indicted by the ICTY was arrested by the international community in Bosnia and Herzegovina was in July 2002.

19. The Office of the Prosecutor does not have the mandate to carry out intelligence or arrest operations on its own. In the past months, the Prosecutor and her Office have strengthened bilateral relations with the relevant authorities in the countries of the former Yugoslavia, as well as with the leadership of NATO. A satisfactory level of mutual trust has been achieved at the most senior level. In parallel, the Office of the Prosecutor has encouraged the relevant authorities at the working level to intensify their co-operation. This initiative is bearing some fruit. The arrest of Milan Lukic in Argentina, for instance, was a good instance of co-operation between Belgrade, Zagreb and Buenos Aires.

20. The authorities of Croatia continue to provide the Prosecutor full co-operation on the search for Ante Gotovina. Otherwise, there is no significant problem in the co-operation offered by Croatia to the OTP, which has been full over the past three to four months. It is expected that Croatia will continue to provide unhampered access to documents and to act aggressively against the criminal networks providing support and protection to Ante Gotovina.

21. Matters are much more difficult with the other six remaining fugitives. Radovan Karadzic, the former President of Republika Srpska, seems to have vanished. There hasn't been any credible information on his past or present location for months now. There are assumptions that he could be hidden in monasteries in Serbia, Montenegro or Republika Srpska within Bosnia and Herzegovina, or even that he could have disappeared in other countries. However, these assumptions are not based on evidence which is in the possession of the Prosecutor. In the meantime, Karadzic manages to write and publish books; the latest one was presented to the public in mid-October in Serbia. Regarding Ratko Mladic, the former leader of the Bosnian Serb Army, the Serbian authorities have admitted that he was hidden by the Army of Serbia and Montenegro at least until 2002. The Serbian authorities have expressed the clear political will to arrest and transfer him to The Hague, and they have taken a number of measures for this purpose. It is however likely that Mladic can still benefit from significant support within key institutions,

disposal to assess why these two most important fugitives are still at large more than ten years after they were indicted, on 25 July 1995.

22. Vlastimir Djordjevic, a former Police General accused of crimes committed in Kosovo against Kosovo Albanians, is still likely to be in Russia. The Office of the Prosecutor has passed available information to the Russian authorities on his possible location. Russia has assured the Prosecutor that Djordjevic was not found at the mentioned location and that investigations are on-going. It is urgent that Djordjevic be brought to The Hague, because the trial of his co-accused is due to begin towards the middle of next year. The same remark can be made regarding Zdravko Tolimir, a former Assistant of Ratko Mladic for Intelligence and Security, who should be tried together with his eight co-accused in a trial due to start in the second half of 2006. Separate trials would divert significant resources, including courtroom time, and therefore significantly impact on the completion strategy.

23. Goran Hadzic, a former leader of the so-called Republika Srpska Krajina, was indicted on 4 June 2004 for serious crimes committed against Croats and other non-Serbs in Croatia. He was tipped off and left his house just hours after the indictment was given to the Ministry of Foreign Affairs of Serbia and Montengro. His whereabouts remain unknown. Stojan Zupljanin was a senior official of the so-called "Autonomous Region of Krajina" in Bosnia and Herzegovina. He was indicted on 14 March 1999 for serious crimes aimed at destroying the Bosnian Muslim and Bosnian Croat communities in that region. Although his precise location is not known, there are reliable indications showing that he is in Serbia and Montenegro or in Republika Srpska within Bosnia and Herzegovina. The OTP's intention is to file a motion requesting a joint trial in The Hague with Mico Stanisic, a former Minister of Interior of Republika Srpska within Bosnia and Herzegovina, who has been on provisional release since 25 July 2005.

24. The Office of the Prosecutor expects from Serbia and Montenegro and from Bosnia and Herzegovina, in particular from the authorities of Republika Srpska, that they redouble their efforts to apprehend the remaining six fugitives who are within their reach. It also encourages the international community to provide all necessary support, material or otherwise, to reach that goal.

Other Forms of Co-operation of States and International Institutions

25. The lack of willingness of the Army of Serbia and Montenegro to co-operate is also demonstrated by its systematic obstruction to the access by the OTP to relevant documents. Despite the energetic efforts of the civilian leadership, the military continues to deny the existence of certain documents, to refuse access to archives or to provide documents after long delays and under such conditions that they can not be used in court.

26. The OTP is faced with similar difficulties in Bosnia and Herzegovina. One of the remaining problems, aside from the fugitives, is the missing wartime archives of Republika Srpska. According to various accounts, they were moved to Serbia or hidden by interested individuals.

27. There is no significant problem with the other States of the former Yugoslavia. Croatia and the former Yugoslav Republic of Macedonia usually respond to requests for assistance in a timely and satisfactory manner. Whenever difficulties arise on specific issues, they can be solved in a pragmatic and efficient way.

28. In several cases, particularly Limaj et al. and Haradinaj et al., the OTP is co-operating with another UN body, UNMIK. The main requests from the OTP relate to the access to documents – which is sometimes denied or made difficult - and to the protection of witnesses. As noted by Ambassador Eide in his recent report to the Council, the intimidation of witnesses is a very serious problem in Kosovo that represents a daily challenge for the prosecution. There is an intense co-operation with UNMIK to ensure that witnesses receive adequate protection and that threats to witnesses are being addressed promptly. This relationship, however, is not always without strain.

CONCLUSION

29. As demonstrated by the present report, the Office of the Prosecutor is doing the maximum to keep up as much as possible with the timeframe of the completion strategy. The first deadline of this strategy was met with all the remaining investigations completed by the end of last year. Additionally, the Office of the Prosecutor continues to work closely with the other organs of the Tribunal to meet the objectives set in Resolutions 1503 and 1534.

30. The Office of the Prosecutor has initiated the transfer of mid-level perpetrators to domestic courts, it has proposed the joining of cases, and it is continuously reviewing the charges in all cases, so as to increase the efficiency of the ICTY's work.

31. The Tribunal, however, does not operate in a vacuum and the successful implementation of the completion strategy will depend on the apprehension of the remaining seven fugitives, among them the three indictees mentioned in several Security Council resolutions. The arrest of Radovan Karadzic and Ratko Mladic, in particular, requires a much more decisive approach from the authorities of Serbia and Montenegro and Bosnia and Herzegovina. The international community can make a difference by maintaining a strong interest in the matter, increasing the national resources devoted to their search and better co-ordinating the various efforts.